

The Commonwealth of Massachusetts State Ethics Commission

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GOVERNMENT DOCUMENTS
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THE CONFLICT OF INTEREST LAW and AUDITORS AND ACCOUNTANTS

Auditors and Accountants are municipal employees covered by the conflict of interest law (Chapter 268A of the General Laws). All municipal employees, whether elected or appointed, full or part-time, paid or unpaid must abide by the restrictions of the conflict law.

The purpose of the conflict law is to ensure that your private financial interests and relationships do not conflict with your responsibilities as an Auditor or Accountant. The law is broadly written to prevent you from even becoming involved in a situation which could result in a conflict or give the appearance of a conflict.

If you are part-time and have been designated as a "special," two sections of the conflict law -- Sections 17 and 20 -- apply less restrictively to you. (All other sections of the conflict law which affect municipal employees apply to special municipal employees in the same way.) See the Commission's Fact Sheet, "Special Municipal Employees" for information on eligibility and the process of designation.

CONFLICT QUESTIONS AND ANSWERS

Accepting Gifts (Section 3)

QUES: In the course of your work, you suggested that a contract be put out to bid again because the bidding procedure had not been adequately followed. The company which ultimately received the contract offered you a gift certificate to a fine restaurant simply to say "thanks." May you accept the certificate?

ANS: No. You may not accept a gift of "substantial value" (\$50 or more), which is given to you because you are the Auditor or Accountant from someone with whom you have official dealings -- even if the motivation for the gift is

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to express gratitude for a job well done or to foster goodwill. Under the conflict law, waived fees, discounts, gift certificates and entertainment are all considered gifts; if their value is \$50 or more, they are prohibited. It is not only a violation for an Auditor or Accountant to accept such a gift; it is illegal for a private party to even make the offer.

If the waived fee is valued at less than \$50, technically you may accept the gift, provided that it is not intended as a bribe. A bribe, no matter what its value, will violate the law.

The conflict of interest law permits municipal agencies to adopt stricter standards than those in the state law. Many local governments simply have an outright ban on accepting any gifts to avoid the appearance of conflict or favoritism which may be created.

Prohibited Actions Affecting Financial Interests (Section 19)

QUES: You are on the Board of Directors of a local company which has a contract with your town. May you, as Auditor, approve the contract as to the availability of funds to support the payment?

ANS: No. You may not participate in any matter that affects the financial interest of a business organization for which you serve on the board of directors. You also may not act on a matter which affects your own financial interest or those of your "immediate" family, employer or a business for which you serve as officer, partner or trustee.

Immediate family is defined in the law as you and your spouse and both of your children, parents, brothers and sisters. For example, you are prohibited from hiring your sister or from participating in any way in the hiring process.

There is an exemption to this restriction, available for appointed Auditors and Accountants. If you are appointed, you may act on a matter affecting your own, your family's or your business' financial interest only if you receive written permission from your appointing authority prior to taking any action. Therefore, if the Board of Selectmen appointed you to your job, the Board could grant you permission to hire your sister or to approve the payment to the company discussed in the previous example. If you are elected, this exemption is not available to you.

Restrictions After Hours (Section 17)

QUES: You are a part-time Accountant; you also work part-time for a computer company. May you represent the company in its negotiations with the School Department to provide computers for a new school program?

ANS: If you are a regular municipal employee, no. You may not act as the agent or attorney for a private party before municipal boards or agencies. Representing the computer company before the School Department constitutes acting as that company's agent; it is prohibited.

If you are part-time and have been designated as a special municipal employee, it depends. You may represent private parties, such as the computer company, before town boards or agencies (other than your own) unless it is on a matter in which you participated or which is now or within the past year was within your official responsibility as Accountant. In this example, if the proposed contract would have to be approved by you or someone under you, you could not represent the computer company in its negotiations with the School Department, even if you were a "special."

See the Commission's Advisory No. 13 "Agency" for more information on this section of the conflict law.

Prohibited Financial Interest in Municipal Contracts & Multiple Jobs (Section 20)

QUES: The school department needs a custodian to clean the school auditorium after a play. May the school department hire the custodian who works for the DPW?

ANS: Yes, if the contract to clean the auditorium has been publicly advertised.

The conflict law generally prohibits municipal employees from having a financial interest in a "contract" with the town or city they work for. Agreements to buy or sell goods and services and municipal employment constitutes a "contract," even if that employment is on a temporary basis. There are exemptions, however, to the restrictions against municipal employees contracting with their city or town.

In this situation, the custodian working for the DPW may be hired to clean the school auditorium only if the contract has been publicly advertised. In addition, other technical requirements must be met. This is the most complex section of the conflict law. Talk to your municipal lawyer or call the Ethics Commission at (617) 727-0060 if you are

considering contracting with your municipality or taking a second town or city position.

One final restriction to note: it is virtually impossible for you to contract with your own agency or with an agency you have official responsibility for. Therefore, the custodian would not be allowed to work for the DPW in another capacity during the evening and receive a second paycheck from DPW for that work.

Misuse of Official Position (Section 23)

QUES: A local bank is the investment advisor for the city's retirement portfolio. You oversee the bank's purchases and sales consistent with the Retirement Board's financial strategy. The bank is about to foreclose on your brother's property. May you call the president of the bank and intervene on behalf of your brother?

ANS: No. The conflict law prohibits you from using your official position to secure an unwarranted privilege of substantial value (\$50 or more) for anyone. In this situation, where you have pending business with the bank, intervening on behalf of your brother would constitute an attempt to use your influence as Auditor or Accountant to benefit your brother.

QUES: Your cousin's company has submitted a bill to your town for services rendered. May you review the bill for accuracy and sign off on the payment to your cousin?

ANS: Yes, provided that you publicly disclose your private relationship with your cousin in writing to your appointing authority (whatever board or person appointed you to the job) prior to taking any action. The disclosure will dispel, by law, the impression of favoritism created when you act on matters affecting distant relatives or friends. In addition, you must be careful to act objectively and not attempt to obtain any unwarranted benefits for your cousin because of your relationship. Using your position to secure unwarranted privileges for people, such as being more lenient with family and friends, violates the law, regardless of whether you disclosed your private relationship. See, Commission Fact Sheet, "Avoiding Appearances of Conflicts of Interests" for more detailed information.

Restrictions After You Leave Government Service (Section 18)

QUES: You have resigned as Auditor and now work for a bank which has a major portion of the city's business. May you

-represent the bank in its dealings with the Treasurer?

ANS: It depends. 1) You may not represent the bank before the Treasurer's office or any other city agency if the particular matter at hand is something in which you participated as Auditor. 2) For one year after you leave the city, you may not appear before city agencies on a matter if it was before your department within two years before you left (even if you did not personally participate in the matter). 3) You may represent the bank before city agencies (including your own) with no "cooling off" period, on new matters, i.e., those you never dealt with and which were not before your department while you were Auditor.

For example, as Auditor, you questioned a bill from a vendor. You may not now, as the vendor's liaison with the city, negotiate the resolution of the problem on that particular bill with the new Auditor.

LEGAL ADVICE

This summary presents a brief overview of the conflict law and suggests activities which you, as an Auditor or Accountant, must avoid. It is not a comprehensive review intended to cover every situation. You should consult your municipal lawyer or call the Ethics Commission's Legal Division at (617)-727-0060 for particular advice on the conflict law.

If you have a question about your own activities, we urge you to request an opinion from your city or town counsel or directly from the Commission prior to engaging in the activity in question.

If you have questions about others' activities in your county, urge them to use the opinion process. In addition, complaints may be filed with our Enforcement Division in person, by phone (at the same number listed above) or by letter. The identity of complainants is kept confidential.

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Commission Fact Sheets are prepared and issued by the Public Education Division of the State Ethics Commission. They are intended to provide guidance to public officials and employees concerning practical applications of the conflict law.

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